

THE WATCHDOG



A Periodic Newsletter from
The Office of the United States Trustee-Region 16

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As this is the last publication of The Watchdog that I will be issuing under my name, I would like to thank the many staff members who have contributed to making this newsletter a reality each quarter. Special thanks go to the first Watchdog editor, Christine Cartwright, and the current editor, Marjorie Gibson. Marjorie will continue to edit the Watchdog, so please continue to send your questions and ideas to her at Marjorie.Gibson@usdoj.gov, or to the Assistant U.S. Trustee in your Division.

Communication between the Office of the U. S. Trustee and the various groups active in different aspects of the bankruptcy system is essential, and this newsletter is an important part of that communication. Please let the office know if there are features or information that should be added, or if you have any other concerns or questions.

In early November, Region 15's U. S. Trustee, Steven J. Katzman, will be assuming my duties until a U. S. Trustee is appointed just for the Central District of California (aka "Region 16"). Steve brings a wealth of expertise to this new position and will be a great asset to the office. His extensive criminal and civil litigation experience, along with a broad bankruptcy background, will allow him to continue the work of the office without missing a beat. This is a fascinating and wonderful district, and I have greatly enjoyed seeing it from this perspective for the past five and a half years.

Maureen A. Tighe
United States Trustee

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CRIMINAL CASES

14 YEARS' IMPRISONMENT FOR INVESTMENT PONZI SCHEME

Reed Slatkin, a co-founder of Earthlink, who held himself out as an investment advisor and obtained millions of dollars from investors by promising profitable returns, was sentenced to 14 years in prison for his role in an enormous Ponzi scheme. In part to escape judgments obtained against him by investors attempting to retrieve their principal, Slatkin filed a Chapter 11 bankruptcy in Santa Barbara. The U.S. Trustee ("UST") held a creditors conference, formed an Official Committee of Unsecured Creditors, filed an Ex-Parte Motion to Appoint a Chapter 11 Trustee and obtained an Order authorizing the appointment of R. Todd

Neilson. Mr. Neilson has so far retrieved approximately \$40 million in assets, filed and confirmed a plan of reorganization, and cooperated with federal prosecutors who obtained the criminal sentence.

CHAPT. 7 TRUSTEE PLEADS GUILTY TO PUBLIC CORRUPTION AND BANKRUPTCY FRAUD CHARGES

Former Chapter 7 trustee Robert Dennis Pryce pleaded guilty on August 14, 2003 to 17 counts relating to public corruption and 32 counts arising from a separate indictment alleging abuse of his role as a bankruptcy trustee. Pryce pleaded guilty to conspiracy, mail fraud, extortion, bribery, and money laundering in connection with his role in brokering a deal to bribe public officials for approving a waste hauling contract in the City of Carson. The bankruptcy counts alleged that Pryce took kickbacks from a real estate agent and contractor in exchange for giving them work in cases where Pryce was a Chapter 7 bankruptcy trustee. Pryce made false entries on official trustee records and court submissions and laundered the kickback proceeds through bank accounts in his daughter's name.

BANKRUPTCY TAX ATTORNEY RECEIVES 32-MONTH PRISON SENTENCE

Jeffrey Sherman, who was a principal in the Sherman & Sherman law firm, as well as CPA and founder of Tax Consulting Group, Inc., a company that specialized in pre-bankruptcy planning, was sentenced on September 29 to 32 months in prison for conspiring to commit bankruptcy fraud and aiding and abetting clients in evading more than \$12 million in income taxes. He was also ordered to pay almost \$600,000 in restitution to the IRS and the California Franchise Tax Board.

As reported in Issue No. 10 of The Watchdog, Sherman's clients **Dr. John Bussell** and his wife **Dr. Letantia Bussell** were tried on charges of bankruptcy fraud and tax evasion. Using nominee companies set up by Sherman and another attorney, Robert V. Beaudry, they falsely claimed in Bankruptcy Court that they had no disposable assets, allowing them to fraudulently discharge

more than \$4 million worth of liabilities, including a debt of more than \$1 million to the IRS.

The criminal indictment charged the Bussells and Jeffrey Sherman with conspiring to conceal the Bussells' ownership and control of their dermatology practice, their interest in approximately one million dollars in diverted income from the practice, a farm in San Diego and their equity in a condominium in Utah. The web of companies designed by Sherman to hide the Bussells' assets was intricate, involving more than a dozen entities and numerous bank accounts in the Cayman Islands and Switzerland.

Sherman was also involved in a similar scheme involving another client, Robert A Grant, a retired Los Angeles orthopedic surgeon. Sherman helped Grant conceal about \$5 million in cash and real estate so that Grant could discharge a tax debt of more than \$11 million. In June, 2003, Grant pleaded guilty to money laundering. His sentencing is set for November 10, 2003.

These cases were referred by the UST to the Los Angeles U.S. Attorneys Office and investigated by the IRS-Criminal Investigation Division, and the FBI.

SSN FRAUD

➤ On September 2, 2003, Judge David Carter of the U.S. District Court sentenced Rafael Berrios (a former bankruptcy petition preparer) to 15 months in prison for failure to disclose five prior bankruptcy cases in which he used various Social Security Numbers (SSNs) and for making false statements at his § 341(a) meeting. He received an additional 60-day sentence because the Court found that he had lied on the stand at his criminal trial and did not take responsibility for his actions. Mr. Berrios's discharge was denied in March 2003, and he was enjoined from petition preparation in 1999 pursuant to complaints brought by the UST.

➤ Judge Cooper found Jose Hernandez guilty of one count of 18 U.S.C. § 402 for contempt of Court for use of a false SSN in his bankruptcy filing, and sentenced him to six months' probation.

► Arla Waxman pleaded guilty to two counts of 42 U.S.C. 408 - misuse of SSNs on two bankruptcies filed in the name of her mother and ex-husband with variations of their SSNs. U.S. District Judge Nora Manella sentenced Waxman to three years' probation, with six months' community confinement, a \$5,000 fine and \$200 special assessment. The Court also agreed with the request of the Special Assistant U.S. Attorney for enhancement under 3C1.1 for obstruction of justice related to Waxman's submission of a false financial affidavit for appointment of counsel, and ordered Waxman to reimburse the government in the approximate amount of \$4,500 for the cost of the counsel appointed to represent her.

PLASTIC SURGEON INDICTED FOR FAILURE TO DISCLOSE PROPERTY HELD IN EUROPE

On June 12, 2003, a Grand Jury returned an indictment against Palm Springs plastic surgeon Borko B. Djordjevic on three counts of bankruptcy fraud. The charges were brought by Assistant United States Attorney Tom Loeser of the Riverside Office. The case was investigated by FBI Agent Robert E. Nickel. The indictment alleged that Djordjevic failed to disclose a home in France worth \$1.2 million and jewelry valued at more than \$200,000 in his Chapter 7 bankruptcy schedules. Trial is scheduled for October 2003.

DEBTOR INDICTED FOR FAILURE TO DISCLOSE TRANSFER AND INTEREST IN REAL ESTATE

Debtor Kazem Majd, aka Joseph Eric Grill, aka Stephen Carl Grasso, aka Kari Major, aka Kezem Majo, aka Robert Hyndman, aka Chester Lloyd Stolor, aka Stephen Charles Grasso, was indicted on August 20, 2003 on five counts of bankruptcy fraud. These counts relate to transfer of his ownership in real property to a family trust within a year prior to his bankruptcy. He was also a beneficiary of the trust. He did not disclose either the transfer or his interest as a beneficiary in the trust in his bankruptcy filing (In re Kazem Majd).

DEBTOR PLEADS GUILTY TO CONSPIRACY, MAIL, AND WIRE FRAUD

Klara Vasserman pleaded guilty to nine counts of conspiracy, mail and wire fraud before U.S. District Judge Florence-Marie Cooper. Vasserman was involved in a multi-million dollar business and credit card bust-out scheme. The co-conspirators bought luxury goods such as diamonds and Rolexes at high-end stores including Neiman Marcus and Tiffany's, with the knowledge that they would be unable to pay for their purchases. The business was forced into an involuntary bankruptcy and the individuals filed for Chapter 7 relief approximately one year later.

FORMER ATTORNEY GUILTY OF CREATING FAKE DISCHARGE ORDERS

Steven A. Dayton, a former attorney, pleaded guilty to one count of bankruptcy fraud. He made false statements and created fake bankruptcy court documents, including a forged Order that purported to discharge the debts of two of his former clients. Dayton made the statements and created the false documents to conceal a scheme to defraud the former clients from whom he had accepted a fee to file a bankruptcy case which he never filed.

PRE-PETITION LUXURY GOODS THROUGH FRAUD LEADS TO CONVICTION

On August 21, 2003, Sharon Lynn Egan pleaded guilty to one count of bankruptcy fraud (18 U.S.C. § 152(3)). Egan incurred approximately \$500,000 in debt using a large number of credit cards to purchase Rolex watches and other goods, which she then arranged to sell to obtain cash. In her bankruptcy case, Egan made false statements to conceal her use of the credit cards and obtain an unwarranted discharge of her credit card debt. Egan's case was dismissed with prejudice on a UST motion.

TARZANA MAN CHARGED WITH BANKRUPTCY FRAUD FOR HIDING FOREIGN BANK ACCOUNTS

A Grand Jury returned a four-count indictment against Charly Sion Hagege who allegedly concealed assets during a bankruptcy proceeding in which he discharged more than \$20 million in debt. He was charged with one count of making false statements to the Bankruptcy Court and one count of concealing assets in his 1998 bankruptcy filing. He allegedly concealed from the Court, the bankruptcy trustee and his creditors, bank accounts held in his name in Florida, Luxembourg and Israel. The bank account balances totaled approximately \$400,000. He was also indicted on two counts of using false SSNs to open three bank accounts after he filed bankruptcy in an attempt to hide his identity. If convicted of all four charges, he faces a maximum possible penalty of 20 years in federal prison.

CHAPTER 11

TRUSTEE NEEDED IN AJJD

On August 26, 2003, Judge Barr granted the UST's motion to appoint a disinterested trustee in the case of A.J.J.D. Acquisition Group Irrevocable Inter Vivos Trust ("AJJD"). Weneta Kosmala was appointed as trustee. The evidence linked AJJD to an earlier Chapter 7 filing under the name of Robert Merlin Wiste and demonstrated that: 1) Wiste did not exist; 2) the person responsible for the Wiste filing, along with the principal for AJJD, orchestrated the AJJD filing; and 3) the person person responsible for the Wiste filing had filed his own prior bankruptcies using different SSNs. During an examination by the UST, the principal for AJJD asserted his Fifth Amendment right against self-incrimination and acknowledged transferring real property into AJJD just before the petition was filed.

TRUSTEE APPOINTED FOR HOSPITAL

In the case of International Philanthropic Hospital Foundation dba Granada Hills Community Hospital, Judge Greenwald ordered the appointment of a

Chapter 11 trustee to take over operations of a hospital that had been in the community for a long time. A management consulting company hired by the debtor to run the hospital did not pay the hospital's payroll taxes, and the company's principal failed to return to the hospital after receiving approximately \$1.2 million in fees, wire transferred to his hometown. David Gottlieb was appointed as the trustee.

EXAMINER APPOINTED TO REVIEW MEDICAL PRACTICE

In two related Chapter 11 cases, Eye of the Valley Medical Clinic, Inc. and Marco Fabrega, an ophthalmologist's two former spouses raised concerns that he was funneling funds out of his practice to his current wife to avoid his debt and move his practice to another state. In order to provide a reliable source of information for all of the creditors and as a potential basis for mediation, the UST consulted with the parties and presented a stipulated scope of an examination to Judge Lax. The Court found that a limited examination would be in the best interests of the estate and ordered the appointment of a Chapter 11 Examiner. Howard Grobstein has been appointed.

THIRD PARTY RELEASE IN PLAN IMPERMISSIBLE

In the case of Micro Plastics, Inc., the UST objected to the release of a third party non-debtor guarantor from liability as proposed by the Chapter 11 Plan, citing the Ninth Circuit cases in In re American Harwoods, Inc., 855 F.2d 621 (9th Cir. 1989) and In re Lowenschuss, 67 F.3d 1394, (9th Cir. 1995) for the proposition that a Plan cannot operate to release a non-debtor guarantor. Judge Mund issued a tentative ruling in accord with the UST's objection, and the debtor agreed to remove the provision from the plan.

FAILURE TO COMMUNICATE WITH COUNSEL GROUNDS FOR APPOINTMENT OF TRUSTEE

In the case of Optical Disc Media, Inc., there was a breakdown in communication between the principals, which resulted in their failure to adequately communicate with counsel for the estate. Because the corporate estate's counsel

was receiving either no or inconsistent instructions from those running this estate, Judge Mund appointed a Chapter 11 trustee. Brad Krasnoff was appointed as the trustee.

PROFESSIONALS WORK TOGETHER TO DEVELOP PLAN

Kenneth C. Henry of Kroll Zolfo Cooper, LLC was appointed as the Examiner in the substantively consolidated Chapter 11 cases of Antoine L. Garabet, M.D., Inc., Refractive Associates, Inc. and Visions Management Corp. Primarily as a result of the Examiner's Report and the mediation efforts of David A. Gill of Danning, Gill, Diamond & Kollitz, LLP, the parties in these cases reached the basis for a consensual plan of reorganization.

CHAPTER 13

Debtors Arturo and Elva Hernandez proposed a Chapter 13 Plan that failed to meet the 11 U.S.C. § 1325(4) liquidation analysis based upon debtors' schedules. The Plan proposed to repay 40% of the unsecured debt while a Chapter 7 liquidation would result in payment of approximately 60%. Reappraisal of debtor's home indicated a value close to that listed on Schedule A. Judge Goldberg ordered a 70% base plan with income tax refunds pledged into the Plan for the entire duration.

DEBTOR I.D. PROGRAM - LOS ANGELES

Since July 22, 2003, four judgments denying the discharge of debtors and two orders dismissing cases have been entered based upon misuse of an SSN. Six similar complaints are pending. Similarly, nine judgments have been entered in cases wherein debtor has received a discharge in a prior case commenced within the six-year period set forth in § 727(a)(8). Seven such complaints are pending. Motions were filed in two additional prior discharge cases and orders of dismissal entered because of factors indicating the petition was not properly filed. Throughout the region, UST offices

are continuing enforcement actions by insuring the correction of petitions with typographical errors in the SSN and by removing cases from the system where debtors are refiling prematurely.

BANKRUPTCY PETITION PREPARERS

UNAUTHORIZED PRACTICE OF LAW

On August 19, 2003, BPP **Debra Jones** opposed the UST's motion for fines and/or disgorgement of fees for accepting the filing fee and giving legal advice to the debtor. Debtor was present at the hearing and offered testimony. She was unable to explain an exemption and had no knowledge of how certain exemption codes were selected on her Schedule C. Jones explained that she made an exemption selection when prompted by her computer program. Jones was enjoined from engaging in the unauthorized practice of law.

Elsa Barberena and **Barberena Professional Services** accepted \$50 from debtors post-petition for the pre-petition preparation and filing of a Homestead Declaration. Ms. Barberena also gave debtors information on the exemption schemes allowed under California law. Judge Jury fined Barberena \$50 and enjoined her from engaging in the unauthorized practice of law.

MOTION FOR RECONSIDERATION DENIED

As reported in the previous issue of The Watchdog, Judge Peter Carroll ordered **Terry Standifer** to disgorge \$440 to debtor, sanctioned her to pay an additional \$1,000 to the Court and enjoined her from practicing as a BPP until the sanctions and disgorgement were paid. On July 17, 2003, Standifer filed a Motion for Reconsideration claiming several deaths in her family during the past year, medical problems, difficulty in locating the Bankruptcy Court, and misfiling of the original UST motion by her office. The Motion for Reconsideration was denied.

In another case, **Terry Standifer** and **Legal-Ease Paralegal Service** charged debtor \$475 to prepare

her bankruptcy documents and another \$200 for the filing fee. Judge Bluebond found that the reasonable fee was \$200 and ordered \$275 to be returned to the debtor. The Court also fined Standifer \$1,000 for collecting the filing fee and using the term "legal" in her advertisements.

DEBTORS NOT GIVEN COPIES OF THEIR PETITIONS

In April 2003, a debtor paid BPPs **Edgar Bonilla** and **Ultra Services** \$400 to prepare and file his bankruptcy papers. The debtor signed the signature pages and was not given a complete copy of his petition, schedules or statement of financial affairs, which were prepared later without the debtor reviewing them. In May, Bonilla had not filed the petition with the Court, but misrepresented to the debtor that he had. In June, the debtor went somewhere else to have his petition prepared. Within days of each other, the debtor filed his new petition and Bonilla filed the old petition. The debtor stipulated to dismiss the Bonilla petition as it contained incorrect information. Judge Robles fined Bonilla and Ultra Services \$1,000, ordered the \$400 returned to the debtor, and referred the matter to the District Court for further action.

BPP FAILS TO DISCLOSE HIS IDENTITY

A debtor testified at her meeting of creditors that the BPP she used worked out of the Bankruptcy Court on Los Angeles Street. However, her preparer failed to disclose his identity on the bankruptcy documents. After further investigation and with help from the Clerk's office, the BPP was identified as **Jose Ivan Alvarez**. He was subsequently fined \$1,000 and ordered to return \$100 to the debtor.

DISGORGEMENTS, FINES, INJUNCTIONS AND OTHER ACTIONS

Judge Peter Carroll fined BPP **Annette Gomez** \$500 for accepting a filing fee, ordered her to disgorge her entire fee of \$200 for unlawful practice of law, and enjoined her from preparing documents for compensation for filing in the Bankruptcy Court until both the fine and disgorgement had been paid

in full. The BPP had advised the debtor on exemptions and on which chapter to file.

BPPs **Carmen Barney** and **Legal Aid-Redlands** were fined \$50 each for using the word "legal" in their advertising and taking the filing fee from the debtor. They were enjoined from preparing bankruptcy documents for compensation until the fines were paid.

Similarly, BPP **Terron Thomas** was fined \$50 for taking the filing fee from debtor and engaging in the unlawful practice of law. He was also ordered to disgorge \$400 and was enjoined from preparing documents for compensation until the fines were paid.

On August 7, 2003, Judge Goldberg heard the motion of the UST for disgorgement of fees, fines and a permanent injunction against BPP **Ana Fundora, aka Ana Guerra**, in a Chapter 13 case. Debtors had paid Ms Fundora at least \$650. The Disclosure of Compensation showed that Ms. Fundora was paid \$600 and the Declaration re: Limited Scope of Appearance (a form reserved for attorney use) showed \$800. Judge Goldberg fined Ms. Fundora \$250, ordered disgorgement of \$400 in fees and permanently enjoined her from preparing any further bankruptcy documents.

The District Court awarded a debtor \$2,000 damages and the UST \$1,000 in fees following the referral of the matter from the Bankruptcy Court re BPPs **Cassandra Bell, Michael A Bell, Liberty Paralegal and Anthony & Associates**. The Bankruptcy Court had previously found that the preparers used money orders payable to the Court in one case for the filing fees of another case, a misuse of the filing fee that was a fraudulent, unfair and deceptive act.

BPPs **Pete De Los Santos, Karen R. Grande, Unidos Podermos, Richard A. Mease, and Freddie Lee Washington** were fined for collecting the debtors' filing fee in violation of § 110(g).

BPPs **James Snordon** and **Hammer Paralegal & Tax Service** agreed not to prepare bankruptcy documents for a period of five years following a

motion for fines by the UST. Snordon was also fined.

BPP Manuel Sanchez, dba Financial Assistance Network, was fined \$1,000 and ordered to return to the debtor \$500 for concealing his identity in the debtor's bankruptcy papers.

§ 727 ACTIONS

REPEAT FILER CAUGHT YET AGAIN

On October 2, 2003, Judge Ryan entered judgment denying the discharge of Sherwin Seyrafi pursuant to § 727(a)(4) of the Bankruptcy Code. Seyrafi, who sought to discharge \$112,400 of unsecured debt in his current bankruptcy, disclosed no prior bankruptcies. In 1998, however, Seyrafi was sanctioned \$8,750 on a UST motion for having signed the name "Steve Sherman" to a fraudulent pro se petition entitled laraanco Development Corp., SA 98-13131 JR ("laraanco"). While investigating laraanco, the UST linked it to ten bankruptcies in Phoenix, Arizona including Irranco Development Corp., 97-15276, Irranco Development Corp., 97-17271, Sherwin S. Seeraf, 98-01928, and ultimately to Seyrafi. Using a photo from a Phoenix newspaper, the UST Santa Ana office confirmed through the BPP who prepared the laraanco petition that Seyrafi was "Steve Sherman." Seyrafi was criminally charged in Arizona for his conduct there and ultimately pleaded guilty to several counts of bankruptcy fraud. In addition to the false statements in his current petition, Seyrafi also made false statements at his § 341(a) meeting. In a subsequent deposition conducted by the UST, Seyrafi admitted to involvement in the prior Santa Ana case, involvement in the Arizona cases and to currently being on federal probation. His conviction in the Arizona cases related in part to his failure to disclose prior cases.

ATTORNEY ACTIONS

COUNSEL TO DISGORGE FEES TO 80 DEBTORS FOR PREPARING PETITIONS WHILE "INELIGIBLE TO PRACTICE"

An attorney who was placed on the "ineligible to practice" list by the State Bar of California for failure to timely complete mandatory continuing legal education, continued to prepare bankruptcy petitions. The attorney stipulated with the UST to disgorge more than \$30,000 in fees to approximately 80 debtors in the Los Angeles area, complete an additional 15 hours of continuing legal education in consumer bankruptcy, and provide over 300 hours in pro bono services to the community in lieu of any fines which the UST may have sought. The settlement agreements were approved by all of the Los Angeles judges except Judge Samuel Bufford. Approval of additional settlement agreements are pending in Woodland Hills, Santa Ana and Riverside which represent an additional \$9,000 in disgorgement of fees to 28 debtors in those areas. The attorney has since been reinstated to the "active" list by the State Bar.

DISGORGEMENT OF FEES DUE TO INADEQUATE REPRESENTATION

On August 7, 2003, Judge Zurzolo granted the UST's motion for an order disgorging all fees in the amount of \$5,000 received by debtor's counsel in the Chapter 11 case of Pei Yin Ko for filing a false statement of compensation and inaccurate schedules that resulted in the dismissal of the case.

SSN ISSUES

➤ On August 21, 2003, Judge Alberts entered judgment in favor of the UST denying the discharge of **Emilio Barragan** pursuant to § 727(a)(4). The Debtor had sought to discharge debt using a false SSN on his bankruptcy petition. The UST determined that the SSN listed by the debtor on his petition had been used by multiple individuals including the debtor and also that the SSN had not been assigned to Barragan. When asked under oath at his meeting of creditors about his SSN, the debtor lied to the Chapter 7 Trustee.

Based on these false oaths by the debtor, the UST filed a complaint objecting to discharge of his debt.

➤ On September 26, 2003, Judge Ryan denied the discharge of **Edgar G. Martinez** pursuant to § 727(a)(4), preventing him from discharging unsecured debt aggregating \$16,727. At the debtor's initial § 341(a) meeting of creditors, Mr. Martinez provided Chapter 7 Trustee Theodor Albert with a Social Security card bearing his name and a number different from that listed on his petition. Debtor testified under oath that he had obtained his SSN card from an SSN office and that the number on the card was the only one he had ever used. Following the § 341(a) meeting, the debtor filed an amendment to his petition changing his SSN to the number appearing on his Social Security card. The UST conducted a search of public records and discovered that the debtor's alleged SSN has been used by a number of individuals and that debtor has used another SSN. The UST also obtained confirmation from the Social Security Administration that the SSNs appearing on debtor's petition and amended petition were not assigned to him.

➤ On September 18, 2003, Judge Alberts entered judgment in favor of the UST denying the discharge of **Redentor Napalan** pursuant to §§ 727(a)(2), (a)(3) and (a)(4). Debtor had sought to discharge \$130,635 of unsecured debt for food, travel, vacation, a cruise, and other items. The UST discovered that debtor had not scheduled bank accounts, a timeshare, an automobile and other items. Moreover, he did not disclose that he had transferred an interest in real property to his cousin within a year of the filing for no consideration. Although the debtor claimed that he had merely held legal title for his cousin and had no equitable interest in the property, he could not explain why: 1) he had lived continuously on the property since its purchase in 1992; 2) he had contributed to the down payment; 3) the mortgage payments were automatically debited from an account in his name; 4) he deducted the mortgage interest on his tax returns; and 5) there was no lease agreement or evidence of rental payments to his cousin.

SUBSTANTIAL ABUSE

VOLUNTARY RETIREMENT DEDUCTIONS DISALLOWED

Judge Ahart granted the UST's § 707(b) motion to dismiss the case of Howard Lam Chow on the grounds that Chow had \$533 in monthly disposable income after that amount was disallowed as voluntary retirement deductions, which would enable him to repay 90% of his debt within three years.

DEBTOR WITH FELONY WARRANTS ISSUED FOR HIS ARREST FAILED TO APPEAR AT HIS § 341(A) MTG

On September 9, 2003, the Chapter 7 case of Charles Douglas Schwarz was dismissed with a 180-day bar to refiling pursuant to an arrangement worked out between the Santa Ana UST office, the Chapter 7 trustee and Schwarz's counsel. In the course of investigating the case, the UST learned that there were three felony warrants issued for Schwarz's arrest. Schwarz did not appear at a continued meeting of creditors, nor did he appear for a Court ordered examination to be conducted by the UST. Schwarz and his wife Lurlene Reynolds were seeking to discharge \$576,409 of unsecured debt and the UST was seeking to determine what amount of that debt, if any, related to Schwarz's alleged criminal conduct. Schwarz has since been arrested. Lurlene Reynold's case was also dismissed but without a bar to refiling.

\$400 MONTHLY CELL PHONE BILL NOT PERSUASIVE

The UST filed a motion to dismiss the case of Aaron and Veronica Rico due to understatement of income and overstatement of expenses. Debtors filed an objection stating that they had actually understated Schedule J expenses by omitting, among other things, monthly cell phone expense of \$400 and additional mortgage reduction of \$100. Judge Jury was not persuaded and granted the UST's motion, resulting in \$74,512 in non-dischargeable unsecured debt.

TRAILER, QUAD & MOTORCYCLE PAYMENTS DISALLOWED

Judge Peter Carroll dismissed the case of Donald and Gail Bannish subject to conversion to Chapter 13 within 10 days. The Court determined that debtors could pay 42% of their unsecured debt over three years if expenses for a trailer, quad and motorcycle, internet service and recreation were disallowed. The Court also determined that debtors could pay 47% over three years if they paid the secured claim on their vehicle under the Plan. Disposable income was \$1,287 per month. However, debtors admitted to only \$702 per month which could pay 28% over three years. They also argued over payment of the secured debt under the Plan. The debtors have appealed the Court's ruling.

NON-FILING SPOUSE NOT ALLOWED TO RETAIN RENTAL REAL ESTATE AND MOTORCYCLE

On July 29, 2003, Judge Naugle heard three separate motions of the UST for dismissal under § 707(a) and (b) of the Chapter 7 cases of Marion Kolitz, Oscar and Rosa De-Dios, and William and Maribel Valle. All three cases were dismissed. In the Kolitz case, the Court was not persuaded that the non-filing spouse should be allowed to retain possession of his rental real estate and Harley Davison motorcycle while the community debts were discharged.

CAR SALESMAN UNDERSTATED INCOME

Debtor Bjorn M. Morris, a car salesman, reported total monthly net income of \$2,990 but his pay stubs showed an average monthly net income of \$4,663. Debtor reported monthly expenses of \$3,022. The UST showed that the debtor could pay 81.9% of the unsecured debt of \$70,403 in a Chapter 13. Debtor responded that the months that the UST had used to calculate the income were the highest earning months. Judge Peter Carroll rejected debtor's argument and granted the UST's motion for dismissal unless debtor chose to convert to Chapter 13 within 15 days.

TWO VEHICLES AND A TIMESHARE TOO MANY

Debtor Deborah L. Davis had scheduled \$70,429 of unsecured debts and an additional \$16,056 in deficiency claims from vehicles that were intended to be surrendered. Debtor had a gross monthly income of \$7,647. Alleged net monthly income and expenses were \$4,862 and \$4,919, respectively. The UST objected to deductions for three creditors totaling \$480 based upon debtor's pay stubs, and broke down the debtor's tax returns to enhance the monthly net income. The UST also objected to expenditures for life insurance and a time share as luxuries, and to monthly installment payments for three vehicles. The UST calculated net disposable income to be \$2,223.66 which allowed a 92.6% return to creditors over three years in a Chapter 13. The UST's § 707(b) motion for dismissal was unopposed and Judge Peter Carroll granted the motion.

FILE CHAPTER 13 IF ABILITY TO PAY

Debtor Todd Dale Clouse listed \$38,700 in secured debt, \$11,471 in priority debt and \$14,389 in unsecured debt. A review of Schedules I and J revealed that debtor had \$737 per month in excess income after expenditures, thus allowing debtor to fund a 100% Chapter 13 plan with surplus income after plan payments. Judge Ahart accordingly granted the UST's motion to dismiss pursuant to § 707(b).

EXPENSIVE CARS PURCHASED ON THE EVE OF FILING IS SUBSTANTIAL ABUSE

➤ Judge Mund granted the UST's § 707(b) motion against Thomas and Victoria Bognar, who sought to discharge \$41,383 in unsecured debt, finding that the debtors' recent purchase of expensive vehicles warranted dismissal of the case as substantial abuse of the Bankruptcy Code.

➤ Ferdie Alviz, who sought to discharge \$79,428 in unsecured debt, purchased a \$34,000 SUV on the eve of filing. This purchase was made at approximately the same time that the debtor's prior vehicle, worth \$34,000, was repossessed. The UST filed a § 707(b) motion to dismiss the case. The debtor, represented by counsel, agreed to convert to Chapter 13.

**\$300,000 CREDIT CARD ABUSE CASE
DISMISSED WITH PREJUDICE**

James Eric Constantinesco attempted to discharge over \$300,000 in consumer debt. He explained that he simply kept getting credit. The UST determined that he had accrued approximately \$100,000 of credit card debt when his tax returns showed little to negative income and he had substantial pre-existing debt. The debtor did not search his records for credit card information or provide the Court with other evidence of his credit history as requested. Judge Lax granted the UST's motion to dismiss the case with prejudice to refiling.

**CASE DISMISSED DUE TO SURPLUS INCOME
AND UNDISCLOSED ASSETS**

Judge Riblet dismissed the case of Benjamin John Tibbin, who sought to discharge over \$77,000 in unsecured debt. Though the Debtor's original schedules showed a net loss of \$669 per month, the UST showed that his properly amended schedules showed a surplus of \$1,367 per month. Evidence from the debtor's ex-spouse also showed that debtor had not provided a complete accounting of his assets in his schedules. As this excess income and additional assets demonstrated debtor's ability to pay his debt, Judge Riblet granted the UST's § 707(b) motion to dismiss the case.

L.A. CIVIL ENFORCEMENT SUMMARY

**SUMMARY OF LOS ANGELES FIELD OFFICE
CIVIL ENFORCEMENT ACTIVITY,
7/23/03 - 9/30/03**

“What We Did On Our Summer Vacation”

In our copious free time, when we are not supervising a panel of 21 (soon to be 25) Chapter 7 trustees, haunting the halls of Roybal to attend Chapter 11 calendar calls, or attending § 341(a) and individual debtor interviews, the Los Angeles field office has been busy implementing the UST Program's Civil Enforcement Initiative.

Since July 23, 2003, when the last edition of The Watchdog was issued, the L.A. field office has accomplished the following:

- **§ 707(a)** Filed five new 707(a) actions; five previously filed 707(a) actions were also granted during this period, and two motions were withdrawn.
- **§ 707(b)** Filed 37 new 707(b) actions; 25 previously filed 707(b) actions were also granted during this period. More than \$1,900,000 in unsecured debt was not discharged in Chapter 7 because of these rulings. We also *withdrew* six motions, after the debtors provided convincing evidence that they belonged in Chapter 7.

Practice Hint: When the UST contacts you and seeks back-up information for Chapter 7 petition data, have that information available and be prepared to provide it quickly. To file 23 motions, we reviewed 3,493 Chapter 7 petitions and ultimately made inquiries to debtor or debtor's counsel on 94; of that 94, we only took further action on 50, because of timely and accurate responses from debtors or their counsel. Also during this period, because of our inquiries, six debtors voluntarily agreed to convert to Chapter 13, and thus avoided the necessity of a 707(b) motion.

- **§ 727** Filed 17 new 727 complaints; in addition, nine complaints previously filed were granted during this period, resulting in \$304,035 in unsecured debt not discharged.
- **§ 110 Petition Preparers.** Filed 94 motions for fines and disgorgements against petition preparers; in addition, 74 motions previously filed were granted, resulting in fines of \$42,825 and disgorgement orders in the total amount of \$9,840.
- **§ 327 Employment of Professionals.** Filed 25 new objections; in addition, nine objections previously filed were sustained during this period. Also, 27 informal inquiries resulted in amicably resolved changes, avoiding the necessity of objecting.

- **§ 1103 Employment of Professionals.** Filed two new objections; two objections previously filed were heard and sustained, and four informal reductions of fees were negotiated.
- **§ 329 Fee Disgorgements.** Filed one new motions for fee disgorgement; 72 previously filed motions were granted during this period, resulting in the disgorgement of \$32,454 in fees.
- **§ 1112(b) Conversion or Dismissal.** Filed 35 new motions to dismiss or convert; also during this period 41 previously filed motions to dismiss or convert were granted and there were two inquiries leading to a successful result.
- **§ 1125 Disclosure Statements.** Filed 25 new objections to disclosure statement; 20 previously filed objections were also sustained.
- **§ 326 Trustee Fees.** Four informal inquiries resulted in \$120,000 in trustee fees withdrawn.
- **§ 330 Professional Fee Requests.** Filed 10 new objections; nine previously filed objections were sustained, and six informal requests were agreed upon, resulting in the reduction or withdrawal of in excess of \$189,000 in fees.
- **§ 1104 Appointment of Trustee or Examiner.** Oversaw the appointment of two examiners during this period.
- **Debtor Id.** See Debtor I.D. Program, Page 5.

Other Significant Actions:

- **Pryce-related matters** The Los Angeles field office continues to work on the investigation and reconstruction of the closed estates handled by former trustee Robert Pryce, who recently pled guilty to numerous felony counts, including demanding and receiving "kickbacks" in Chapter 7 estates. We are also overseeing litigation conducted by the successor trustees in open estates previously managed by Pryce, and continue to litigate discovery and fee requests related to these open estates.
- **Chapter 11 negotiations.** We negotiated a continuance of a Chapter 11 debtor's emergency

motion to obtain financing secured by its accounts receivable and an agreement for the debtor to provide additional financial information in support of the motion.

- **Opposed Forum Shopping.** Successfully opposed a debtor's motion to reconsider the Court's order transferring a case to the Eastern District of Michigan in the interests of justice; also opposed the debtor's alternative motion to dismiss the case. The Court denied both motions.

The next time someone asks, "What does the U.S. Trustee do?" - you will know the answer!

– Jill M. Sturtevant, AUST-LA

TRUSTEE PROFILE

Profile of Arnold L. Kupetz, Chapter 7 Panel Trustee in Los Angeles Division



Mr. Kupetz, after 40 years of serving as a receiver/trustee in the Central District of California, has tendered his resignation as a panel trustee. He remembers those 40 years as challenging, fascinating, full of surprises along with disappointments. He feels that his overall practice of being a vicarious entrepreneur one day and a serious lawyer the next day was as diverse and interesting as anyone could expect.

Mr. Kupetz was born, raised and educated in Denver, Colorado. He was the son of immigrant parents who owned and operated a small neighborhood bar. Mr. Kupetz decided on law because he thought it might be a good opportunity to enter the business world and also, according to Mr. Kupetz, because some inept aptitude tests indicated that he was well suited for the profession.

He attended the University of Colorado at Boulder for two years before transferring to the University of Denver where he obtained his Bachelor of Science degree in 1955 and his Juris Doctorate in 1956. While in school, Mr. Kupetz served as a clerk for Justice O. Otto Moore of the Colorado Supreme Court. After graduation, he fulfilled his military commitment by serving for three years as Judge Advocate Officer in the United States Air Force at Mountain Home, Idaho.

In 1960, Mr. Kupetz moved to the Los Angeles area with his wife, whom he met at a Simi Valley Educational Camp for Jewish youth, which is now known as the Brandeis Collegiate Institute, a part of the Brandeis-Bardin Institute. Mr. Kupetz and his wife are still active supporters of the Institute, and in 1998 they were the honorees at the Institute's annual dinner.

After passing the California Bar exam, Mr. Kupetz entered the bankruptcy world when he went to work for Irving Sulmeyer in the summer of 1960. Irving was then a sole practitioner and a receiver (trustee) for the Honorable Ray H. Kinnison, Referee in bankruptcy. Sulmeyer & Kupetz formed a partnership in 1963 and Mr. Kupetz notes that their relationship has always been supportive and positive. He says, "Irving is the smartest and most creative lawyer that I have encountered in my career and working with him was always exciting and innovative."

Mr. Kupetz began serving as a co-receiver and co-trustee in 1963. Until 1979, most of his cases were operating businesses. Mr. Kupetz has been involved as a receiver/trustee in more than 40 operating cases during the course of his career. He considers himself a hands-on trustee, intimately involved in all aspects of case administration and operation. He had no qualms about putting on his cowboy boots to walk through acres of manure of Downey Fertilizer Co. and the feed lot in Somis, California.

Mr. Kupetz has been involved in an incredible variety of businesses, each providing unique challenges and learning opportunities. For example, in the Sports Club, Inc. case, Mr. Kupetz was told by the attorney for the creditors' committee that the case was administratively

insolvent. However, his own investigation and actions led to the liquidation of two major warehouses of stores. He brought numerous preference actions, enforced a debt against the debtor's principal and paid not only all administrative debts but was able to distribute approximately \$12,000,000 to unsecured creditors!

Probably the most exotic case was the operation of the Hollywood Tropicana Club, the famous female mud wrestling nightclub. Mr. Kupetz claims that nearly everyone in his office volunteered to work on the case. In due course, Mr. Kupetz proposed and obtained confirmation of a trustee's plan which paid all creditors in full and returned a significant surplus to the debtor.

Even after having so much fun and success, Mr. Kupetz states that his greatest joy in the practice of law has been the thrill of being able to work with his eldest son David for the last 17 years. "I can't think of any greater pleasure than being able to work with one's child, watch him grow and develop, do excellent work and become an outstanding lawyer."

Mr. Kupetz is also the father of three other children - Tamara Kupetz-Staph, a personal trainer and teacher of pre- and post-natal exercise programs, Daniel, a business affairs lawyer at CBS television, and Jonathan, a Rabbi at Stephen S. Wise Temple in Los Angeles. Mr. Kupetz is blessed with nine "beautiful, fabulous" grandchildren. All of his children, their spouses and grandchildren live in the Los Angeles area.

Mr. Kupetz believes that a good trustee, besides being as conscientious as possible, must also be a good listener and try not to take himself/herself too seriously. Trustees are probably the only quasi-judicial persons that a debtor has encountered. He hopes they remember that they are adjuncts of a very important federal court of equity.

The staff of Region 16 of the United States Trustee Program are very grateful for the 24 years of outstanding service by Mr. Kupetz on the Chapter 7 Panel. Mr. Kupetz has served on the Panel since our inception in 1979 and has successfully sustained his hard work, dedication, and excitement for his role as a trustee. We all wish

him the very best and a healthy and happy retirement.

AWARD FOR COMBATING IDENTITY THEFT



Sandra R. Klein (L)
Debra W. Yang, USA (R)

In April 2003, in recognition of her efforts to educate the public about identity theft, Special Assistant U.S. Attorney for the Office of the U.S. Trustee **Sandra R. Klein** received an award from the U.S. Attorney's Office in Los Angeles for her

"Commitment and Assistance to the Victim Witness Program."

In an effort to protect the public and combat one of the fastest-growing crimes in the country, Ms. Klein created an educational video program called "Stop Identity Theft Now." The UST Program and the U.S. Attorney's Office in the Central District of California fully supported her developing and filming the program. The video, which has been made available to the public at no charge, is the nation's first comprehensive, proactive program that focuses on educating attendees *before* they become victims. During the video, Ms. Klein addresses a live audience, and discusses five topics related to identity theft:

- What is identity theft?
- How does an identity thief get your personal information?
- How does an identity thief use your personal information?
- How can you protect yourself from identity theft? and
- What should you do if you are an identity theft victim?

The program also includes two pamphlets created by Ms. Klein: one provides an outline of the information discussed in the video and can be used

as a resource guide, and the second contains information about federal resources that are available to identity theft victims.

To date, over 7,000 copies of the video have been requested by organizations nationwide, including, senior citizen centers, schools, colleges, libraries, houses of worship, police and sheriff's departments, banks and credit unions, doctors, lawyers, accountants, and news media outlets.

For copies of the video, please fax your request to the Victim/Witness Unit at (213) 894-2744. (Due to the great demand, requests can only be made by fax - no phone calls please.)

CONSUMER DEBTOR EDUCATION

Outreach

On September 12-14, 2003, the Los Angeles office of the UST participated in the 15th Annual Black Business Expo and Trade Show at the Los Angeles Convention Center by distributing pamphlets, brochures and booklets on a variety of consumer education subjects to thousands of adults and hundreds of children of all ages. The materials were a collection of educational literature from federal and state governmental agencies and nonprofit consumer organizations on a wealth of consumer issues such as credit, credit reports, credit laws, insurance, product and consumer safety, pension and labor rights, internet rules, scams, how to teach kids about money issues and comic books on money, banks, checks, inflation, and foreign trade. Many thanks to Linda Bailey, Sam Lor and Vinhloc Nguyenphuoc for volunteering for this important outreach program.

Brown Bag Meetings

The following meeting is scheduled:

NOVEMBER 5, 2003 - *The Basics of Litigating Cases under 11 U.S.C. § 523*
Speaker: J. Scott Bovitz, Attorney



PLEASE NOTE THAT THE DATE OF THIS MEETING WAS INCORRECTLY STATED AS NOVEMBER 4 IN THE WATCHDOG ISSUE 13.

The 2004 programs will be listed in subsequent issues of The Watchdog.

These brown bag meetings are free and take place from 12 noon to 1:00 p.m. at Ernst & Young Plaza, 725 South Figueroa Street, Los Angeles in Room #101 on the ground floor. All programs qualify for one hour of MCLE credit to the participants.